land for the specific purposes for which it is taken contemplates; for in the very nature of things its appropriation is a condition precedent to the existence of the improvement, and it cannot share in the effect of the change to create which it must be used."

HOMICIDE—EVIDENCE—CONDUCT OF ACCUSED.—STATE V. LEO, 77 ATL., 523 (N. J.).—*Held,* that evidence that accused, in a prosecution for killing his wife, at the time of her funeral looked on her dead body, touched and kissed it, was inadmissible to show the existence of love for her during life.

Upon a trial for murder, the prevalent rule is that evidence tending to show the accused's feelings toward the person killed is admissible, to show a motive for the crime. *People v. Kern,* 61 Cal., 244. So on the prosecution of a man for the murder of his wife, it is proper to show the character of the relations between them. *Siberry v. State,* 39 N. E. (Ind.), 936. This may be done by showing the pendency of a divorce action, *Binns v. State,* 57 Ind., 46, or by proof of the adultery of accused and another, *St. Louis v. State,* 8 Nebr., 405. By analogy to the rule of a declaration against interest, the conduct of accused and another female on the day of the burial may be shown. *State v. Hinkle,* 6 Clarke (Ia.), 380. Also, that on the day after the homicide, defendant shed no tears, and was indifferent. *Greenfield v. People,* 85 N. Y., 75; *semble, People v. Bemis,* 51 Mich., 422. But it has been held that statements made by accused to third persons after the homicide are not admissible as evidence in his own behalf. *State v. Talbert,* 41 S. C., 526. However, statements in his own interest, and by analogy, his conduct, three or four minutes after he had shot deceased, are admissible, as part of the *res gestae. Harrison v. State,* 20 Tex. App., 387.

INDEMNITY—CONTRACT—WHAT CONSTITUTES.—HILLIARD V. NEWBERRY ET AL., 68 S. E., 1056 (N. C.).—*Held,* that a bond to indemnify plaintiff against any damage he may suffer by reason of a mortgage on land, which was also a promise to pay a certain sum by a certain date, was not strictly a contract of indemnity.

Indemnity may be defined as the obligation or duty resting on one person to make good any loss or damage another has incurred while acting at his request or in his behalf; *Vandiver v. Pollak,* 107 Ala., 547, and differs from contracts to pay a certain sum of money or to do a certain act in that, the case of a bond or contract conditioned to indemnify damage must be shown before the party indemnified is entitled to recover, whereas, a cause of action accrues on a bond or contract to do a certain act as soon as there is a default in performance, whether the obligee or promisee has suffered damage or not. *Northern Assurance Co. v. Borgelt,* 67 Nebr., 282; *Henderson-Achart Lith. Co. v. Shillito,* 64 Ohio St., 236. It is undoubtedly true, as a general proposition, that in order to recover upon a bond or agreement to indemnify and save harmless, actual damage must be proved and shown. *Churchill v. Hunt,* 3 Denio (N. Y.),

321; *Aberdeen v. Blackmar,* 6 Hill (N. Y.), 324. A distinction, however, is recognized between an affirmative covenant for a specific thing and one of mere indemnity against damage by reason of the non-performance of the thing specified. *Gilbert v. Wiman,* 1 Const. (N. Y.), 550. It was held in *In the matter of Isaac Negus,* 7 Wend. (N. Y.), 499, that where a bond is given intended as a bond of indemnity, but containing an express covenant that the obligee will pay a certain sum of money at a certain time, an action lies for the breach, although it is not shown that he has been damnified, unless from the whole instrument it manifestly appears that the sole object was a covenant of indemnity. The principle established in the decision, where it has been held that if a bond be conditioned for the payment of money at a certain day, though really given by way of indemnity, and that fact appearing on the face of it, is that the debt accrues from the day mentioned in the condition, and does not await the damnification. *Port v. Jackson,* 17 Johnson (N. Y.), 239.

INJUNCTION—STRIKES—UNLAWFUL ACTS.—SCHWARCZ V. INTERNATIONAL LADIES' GARMENT WORKERS' UNION ET AL., 124 N. Y. SUPP., 968.—*Held,* that a strike ordered to drive non-union employees out of a trade unless they join the union is unlawful, and will afford ground for injunction.

Whether a strike will afford ground for injunction depends on the legality of its immediate purpose. *Miller v. U. S. Printing Co.,* 91 N. Y. Supp., 185. In general, workmen have a right to combine for their own protection, and a lawfully conducted strike to enforce reasonable demands will not be enjoined. *Queen Insurance Co. v. State,* 86 Texas, 250. This includes the right to strike on employers' refusal to discharge non-union workmen. *Jersey City Printing Co. v. Cassidy,* 63 N. J. Eq., 759; *National Protective Assn. v. Cumming,* 170 N. Y., 315. If the immediate purpose is unlawful, however, an injunction will issue to restrain all unlawful acts and orders. *Curran v. Galen,* 152 N. Y., 33. Any interference by a combination with the right of the employer to have laborers flow freely to him comes within this purpose. *Purvis v. Local No.* 50 *United Brotherhood of Carpenters and Joiners,* 214 Pa., 348. As does also an attempt to deprive a mechanic of the right to work for others unless he will join a particular union. *Erdman v. Mitchell,* 207 Pa., 79. Or an edict to employers that they will not be permitted to run their plant with non-union workmen. *Otis Steel Co. v. Labor Union,* 110 Fed., 698; *Franklin Union No.* 4 *v. People,* 220 Ill., 355. Or the use of force, threats, or intimidation by former employees to cause other employees to leave the service of employers. *Knusden v. Benn et al.,* 123 Fed., 636. But the use of enticement and persuasion without force, threats, or intimidation will not afford ground for injunction. *Butterick Pub. Co. v. Typographical Union,* 100 N. Y. Supp., 292.

INSURANCE—ESTOPPEL TO AVOID POLICY—FAILURE TO RESCIND.—STATE LIFE INS. CO. V. JONES, 92 N. E., 879 (IND.).—*Held,* that to successfully defend suit by the beneficiary of a life insurance policy upon grounds of false representations of the application and broken warranties, an insurance company must show that the contract has been rescinded and the premiums